STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 97-886

December 4, 1997

PUBLIC UTILITIES COMMISSION, Requirements for Non-Core Utility Activities and Transactions Between Affiliates (Chapter 820)

NOTICE OF RULEMAKING

WELCH, Chairman; NUGENT and HUNT, Commissioners

I. INTRODUCTION

In this Notice, we initiate a rulemaking to create Chapter 820 of our rules, Requirements for Non-Core Utility Activities and Transactions between Affiliates. The rule incorporates the principles established in *Robert D. Cochrane v. Bangor Hydro-Electric Company, Request for Commission Investigation into Bangor Hydro-Electric Company's Practice of Installing or Monitoring Security Alarm Systems,* Docket No. 96-053 (January 28, 1997). In that case, we determined that Bangor Hydro-Electric Company (BHE) could operate its security alarm business (CareTaker) subject to certain conditions. These conditions included: below-the-line accounting for the non-core activity; a requirement that the non-core activity take place in a separate corporate entity; and limits on the use of customer information. In the *Cochrane* Order, we stated that we expected to apply the general principles articulated in *Cochrane* to all utilities, but that we would do so through a generic rulemaking.

The proposed rule also incorporates the requirements of L.D. 502, "An Act to Require Fair Compensation for Ratepayer Assets Used by a Subsidiary or Affiliate of a Utility." This Act, signed into law on May 21, 1997, is codified in sections 707, 713, 714 and 715 of Title 35-A. The provisions of the Act require that if an affiliated interest of a utility expects to use a facility, service or intangible, including the good will or company name, the affiliate must pay the utility for the value of the use of the facility, service or intangible. 35-A M.R.S.A. §707(3)(G). The Commission must determine the proper allocation of costs for shared, facilities, services or intangibles. *Id.* The statute further provides that a utility may not charge its ratepayers for costs attributable to unregulated business ventures undertaken by the utility or an affiliated interest, 35-A M.R.S.A. § 713; requires that the utility provide notice to the Commission of any business activity not regulated by the Commission, 35-A M.R.S.A.§ 714; and directs the Commission to adopt rules that prescribe the allocation of costs for facilities, services or intangibles that are shared between regulated and unregulated activities of a utility or an affiliated interest, 35-A M.R.S.A. § 715. The rules we are required to adopt are major substantive rules as defined in Title 5, chapter 375. *Id.* The proposed rule is in accordance with these statutory requirements.

II. NOTICE OF INQUIRY

On April 2, 1997, the Commission issued a notice of inquiry into the requirements for utilities conducting non-core utility activities. *Public Utilities Commission, Inquiry into Requirements of Conduct and Structure for Utility Involvement in Non-Core Activities,* Docket Nor. 97-173 (April 2, 1997). The Notice of Inquiry asked utilities and other interested persons to comment on a series of questions about the applicability of the Cochrane principles to all utilities. The following interested persons filed comments: Telephone Association of Maine; Fox Island Electric Cooperative; Public Advocate; Maine Rural Water Association; Bangor Hydro-Electric Company; Central Maine Power Company; NYNEX; Maine Water Utilities Association; Northern Utilities; Maine Public Service Company and Mr. Cochrane. The comments were constructive in helping us to develop the proposed rule.

III. DISCUSSION OF INDIVIDUAL SECTIONS

Section 1: Definitions

The proposed rule contains a number of definitions, some of which derive from our order in the Cochrane case. For example, the definitions of Aggregate Customer Information (ACI) and Customer Specific Information (CSI) essentially mirror the definitions supplied in the *Cochrane* Order.

In the Notice of Inquiry, we asked how non-core activities should be defined, whether incidental activities should be

exempted from the requirements of the rule, and how incidental activities should be defined. The proposed rule contains a definition of non-core activities for gas, electric and water utilities that is similar to that developed in the Cochrane order, but expanded to cover all utilities. We have added additional language, however, to provide that if a utility provides a service to customers outside of its service territory, this service will be considered a non-core service even if the service is related to the provision of the utility's primary monopoly function. In addition, the proposed rule includes a definition of incidental services that are exempted from the separate corporate entity requirement. We request further comment on whether the definition of incidental service adequately addresses concerns over whether there should be a *de minimus* exception to the rule.

Some commentors in the Notice of Inquiry suggested that the definition of core service should exclude customer service functions that are available from an entity other than a utility. Other commentors have suggested that core services should be defined as services that the Commission has tariffed even if the service is available on a competitive basis.

The rule does not exclude from the definition of core services customer services that are related to, or necessary for, the provision of the utility's monopoly function if those services are available on a competitive basis unless the utility

provides the service outside of its service territory. We are using the utility's entry into the competitive market as a proxy for determining whether the service is available on a competitive basis.

The proposed rule also does not incorporate the suggestion that any tariffed service should be considered core. Because there are services, such as an energy information services, that are currently tariffed but may in the near future be de-tariffed, the proposed rule does not contain such a broad definition of core services.

We note that the waiver provisions of Chapter 110 allow us to waive the requirement that a non-core service be provided through a separate corporate entity if the utility shows good cause for the waiver and that providing the waiver does not contravene the policies underlying the rule. We welcome further comment on the definition of core services for gas, electric and water utilities.

For telephone local exchange carriers (LECs), we have included in the category of core services any service provided by the LEC as part of the public switched network, except for certain categories identified in the Telecommunications Act of 1996 (TelAct). This definition allows local exchange carriers to conduct many activities related to the provision of basic telecommunications service without placing those activities in a separate corporate entity. This proposed definition acknowledges

the difficulty in separating services related to the provision of basic telecommunications services from the provision of the basic services themselves. We also note that many of the requirements of this rule already apply to the nonregulated activities of local exchange carriers under FCC rules. Finally, we note that many local exchange carriers already conduct nonregulated activities through affiliates and thus transactions between LECs and their affiliates are still governed by this rule. We request comment on this definition of core utility service for LECs. Specifically, we request comment on whether the definition of core service should include inside wires installation and maintenance service and whether an alternative definition of core service as any regulated service may be appropriate.

The proposed rule also contains definitions of good will and intangibles; these terms are included in the new legislation. We do not adopt the accounting definition of good will, that is, the excess of market price over book value when a business is purchased or acquired by another business. In this rule, we define good will as the benefit or advantage provided by the utility's established reputation and customer relationships. This definition is consistent with the way the term has been used in other jurisdictions in which the issue of payment for an affiliates use of good will has been addressed.[1] As we use the

[1]*See, e.g., Minnegasco, a Division of NorAm Energy Corp. v. Minnesota Public Utilities Commission*, 169 PUR 4th 405(Minnesota Sup. Ct., June 13, 1996) (good will represents the value of a utility's name and reputation); *see also Black's Law Dictionary,* defining good will as "the benefit or advantage of having

term good will, it would never have a negative value. We request further comment on these definitions.

Finally, the proposed rule provides a definition of investment grade bond rating based on ratings by the major investment rating services. This definition relates to certain limitations on utility investment in affiliates as discussed below.

Section 2: Separate Corporate Entity for Non-Core Utility Services

This section prohibits a utility from offering both core and non-core utility services within the same corporate entity. A utility must establish a separate corporate entity in which to undertake non-core utility services pursuant to the reorganization requirements in 35-A M.R.S.A. § 708. The proposed rule also allows a utility to use an existing affiliate to meet the separate corporate entity requirements. These provisions are those established in the *Cochrane* case. In that case, we determined that the most effective way to insulate utility ratepayers from any financial risks of the non-core venture is to require utilities to conduct non-core ventures in a separate subsidiary. We found that:

> requiring utilities to conduct non-core utility activities in a separate subsidiary will best protect utility customers from risks associated with non-core activities Separate books and records will allow both the utility and the Commission to more easily track expenses and income associated with the non-core venture. Ratepayers may also

established a business and secured its patronage by the public."

> achieve a degree of insulation from liabilities incurred by the non-core subsidiary. Finally, a separate subsidiary may reduce any potential negative impact on the utility's cost of capital resulting from poor financial performance of the non-core activities.

Cochrane Order at 9. We further determined that allowing a utility to operate various non-core activities within one subsidiary may reduce the transaction costs of establishing separate subsidiaries.

This section also requires the utility to comply with the requirements of section 707 of Title 35-A and with the requirements of section 3 of the proposed rule (governing value of utility goods, services, and intangibles).

Section 3: Value of Utility Goods, Services and Intangibles

This section provides the methodology for determining the value of utility, goods, services and intangibles transferred to or used by an affiliate. For shared utility equipment, facilities and service, the utility must use a fully distributed costing methodology to assign and apportion costs between its core and non-core services. This methodology will be incorporated in a support services agreement for which the utility must seek approval pursuant to 35-A M.R.S.A. § 707. The proposed rule thus requires the costing methodology required by the Federal Communications Commission (FCC) for telecommunication carriers to separate their regulated costs from non-regulated costs. In *Cochrane*, we determined that

> This methodology protects ratepayers from subsidizing competitive ventures, allows ratepayers to participate in the economies of scale and scope that may result from the utility and its subsidiary, and encourages cost reductions that benefit ratepayers . . . Using fully distributed costs builds a margin for error -- in favor of ratepayers -- into the allocation. If some variable costs are missed in the direct assignment, then ratepayers are still protected by allocation a portion of the costs found to be common.

Cochrane Order at 11-12.

We find that the use of fully allocated costing methodology is the most reasonable and efficient way of valuing and allocating costs for utility equipment, facilities, services, or personnel used by an affiliate. We note that L.D. 502 requires the Commission to identify the value of utility facilities and services used by the affiliate and to determine the proper allocation of costs between the affiliate and the utility for shared facilities and services. We believe that this method is in accord with our statutory mandate. We consider that it would be difficult, if not impossible, to determine the market value for most shared equipment, facilities, and services. The fully allocated costing methodology provides the best available proxy for determining value as required in the statute.

For assets actually transferred by a utility to an affiliate, the rule establishes the value as the greater of net book value or the market price. However, for assets transferred from the affiliate to the utility, the value is the lower of net book value or the market price. These asymmetrical valuation

rules have been found to be appropriate in other jurisdictions for the protection of ratepayers. *See Re Baltimore Gas and Electric* Company, 172 PUR 4th 347, Maryland Public Service Commission (April 11, 1996); *Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities; Amendment of the Uniform System of Accounts for Class A and Class B Telephone Companies,* Order Adopting Final Rule, Federal Register vol. 52, No. 204, Thursday, October 22, 1987. (rule for transfers from affiliates to a utility prevents rate base inflation and cost shifting; rule for transfers from utility to affiliate aimed at preventing cross subsidization of the nonregulated affiliate and to permit ratepayers to benefit from the gain, if any on the assets while they were under regulation). We agree and have proposed the same rules here.

L.D. 502 also requires that the Commission determine the value of intangibles such as “good will” or “company name.” Clearly such intangibles have no book value; however, as the Legislature recognized, name recognition and customer relationships from an established business can be of significant value to a fledgling enterprise. Thus, in accordance with the statute, the rule proposes that the value of any utility intangible transferred from a utility to an affiliate or used by the affiliate is the market value of the intangible determined by the Commission in the course of considering the agreement or arrangement involving the use of that intangible. 35-A M.R.S.A. §

707. We envision using an appraisal or market study to aid us in determining the value of the intangible. Thus, as discussed in section 6 of the rule, the utility is required to file such an appraisal or market study as part of its petition pursuant to 35-A M.R.S.A. § 707 for approval of an affiliated transaction involving the use of an intangible.

We have provided an alternate methodology for determining value of good will. This proposed alternative would establish a rebuttable presumption that a royalty of two percent of the total capitalization of the utility's non-core activity will be imputed for ratemaking purposes. This methodology has been adopted in at least one jurisdiction. *New York Public Service Commission, Re Rochester Telephone Corporation*, 145 PUR 4th 419 (July 6, 1993). (royalty of two percent of the total capitalization of the utility's unregulated operation imputed for ratemaking purposes as a determination of the value of the utility's name and reputation as well as to provide protection against improper cost allocations and affiliate overcharges.) The rebuttable presumption would allow the Commission to consider evidence such as an appraisal or market study indicating that the two percent royalty is either too high or too low. We request further comment on whether there are other appropriate methods of determining the value of intangibles such as good will or use of company name and customer relationships.

The proposed rule also requires the use of a cost manual or other written material documenting the cost allocation methodology. In addition, the rule requires that the utility charge its affiliate for the value determined under this section and file as part of its annual report the amount received from its affiliates for the use of the utility's facilities, services and intangibles. Finally, the rule prevents the utility, without specific Commission approval, from offering payment terms that are inconsistent with those offered in the course of normal business. Thus, it is expected that the affiliate will actually pay the utility, within reasonable periods of time, for the use of any utility facility service or intangible. This provision reflects the statutory requirement that

> When any of its facilities, services or intangibles are used by the affiliated interest, the utility's costs must be charged to and received from the affiliated interest based upon [the value determined by the Commission].

35-A M.R.S.A. § 707(3)(G).

Section 4: Cap on Investments by Utility in Affiliates

This section proposes certain restrictions on utility's investments in non-core activities. The rule limits the permissible level of total investment in affiliated interests to a level not to exceed five percent of the utility's total capitalization, that is, the sum of debt and equity. In addition, the rule prohibits a utility from investing in an

affiliate if the utility's bond rating is below investment grade or if the utility has filed for, or been granted, an emergency rate increase within six months of the filing for approval to invest in the affiliated interest.

The five percent cap was proposed by the Public Advocate's expert in the *Cochrane* case. In *Cochrane*, we declined to adopt this cap, preferring at that time to determine the amount the core utility can invest in the subsidiary. The reason for such a limit or a cap is ensure that investment in the non-core utility activity does not impair the financial integrity of the core business. In a recent case involving a monetary rather than percentage cap established by a stipulation, we determined that in this rulemaking we would consider whether some other criterion rather than a specified dollar amount was the appropriate method of determining whether there is adequate protection for ratepayers.

The proposed rule links the level of investment to five percent of the Company's overall capitalization as a measure of the risk that we determine is unlikely to harm the Company's financial integrity, as long as the utility’s financial condition is sound at the time that it seeks to make the investment. Thus, if a company is in sound financial condition, as evidenced by an investment grade bond rating, and the investment sought to be made will not cause the utility to exceed the five percent cap, the proposed rule establishes a rebuttable presumption that the

investment will not harm the utility or its ratepayers. Because the risk determination is made in the proposed rule's cap on the amount of permissible investment and the requirement that a utility is in sound financial condition, we envision eliminating any inquiry into the riskiness of the proposed venture. Thus, the proposed rule will allow a utility to choose its own investment strategy regardless of the riskiness of the proposed investment as long as it meets the risk limitation standards set forth in the proposed rule. The elimination of any inquiry into the riskiness of the venture also may help to streamline the decisionmaking process pursuant to 35-A M.R.S.A. § 708. We request comment on whether five percent is the appropriate percentage for the cap. In addition, we ask for comment on whether the cap should be a percentage of total capitalization as proposed in the rule or whether instead the cap should be a percentage of total assets.

The proposed rule also prohibits further investment in non-core activities by a utility that has filed for or been granted an emergency rate increase within six months of the request for approval of investment in a non-core venture. Inherent in a utility's request for emergency rates is its acknowledgment that it is not in sound financial condition. Similarly, any emergency rate increase granted by the Commission may be viewed as a determination that the utility's financial condition is not sound. We request comment on an alternative

approach that would establish a rebuttable presumption that a utility that has filed for or been granted an emergency rate increase within six months of the request for approval of investment in a non-core venture is not in sound financial condition.

Section 5: Ratemaking Treatment

The proposed rule provides that all non-core utility activities will be treated as below-the-line. This means that the costs and revenues of the non-core activity are excluded from those considered in determining rates for core activities. This provision is consistent with our analysis in *Cochrane* that below-the-line treatment is appropriate because it "allocates the potential risks and rewards of the non-core activities to shareholders alone and holds ratepayers indifferent to the presence of the non-core activity." Most commentors in the inquiry agreed that below-the-line treatment is appropriate.

The new legislation also raises the issue of allocating amounts paid by the affiliate for use of a utility intangible. We interpret the language of the statute to require us to allocate such payments to ratepayers. We base this conclusion on the statutory language requiring that if an affiliate uses the facility, service or intangible, "the utility's cost must be charged to and received from the affiliate based on [the] value [determined by the Commission]." This language indicates the Legislature's intent that the amounts would be included in the

utility's revenues for the purpose of ratemaking. We further base our conclusion on the title of the new legislation, "An Act to Require Fair Compensation for Ratepayer Assets Used by a Subsidiary or Affiliate of a Utility." This language identifies utility intangibles, facilities and services as ratepayer assets.

We also have considered the language of section 713, which states "[t]he Commission shall allocate between a utility's shareholders and ratepayers, costs for facilities, services or intangibles, including good will or use of a brand name, that are shared between regulated and unregulated business activities." 35-A M.R.S.A. § 713. We interpret this language to ensure that costs of certain items shared between the utility and the affiliate are allocated properly and that cost shifting from affiliate to the utility's ratepayers does not occur. Thus, for equipment, facilities, and services the use of fully allocated costing methodology addresses this concern. Similarly, we read the inclusion of good will and company name to require the Commission to determine the amount that the affiliate will compensate the utility and thus its ratepayers for the use of the Company's name and reputation. The proposed rule also acknowledges that there may be circumstances in which a utility acquires an intangible that is wholly unrelated to the utility's provision of service to ratepayers. We request further comment on these provisions.

Section 6: Filing Requirements

This section contains filing requirements for notification of the undertaking of each non-core activity and filing requirements for section 707 and 708 filings. Most of the information required is ordinarily part of the utility's case in such filings. This section also requires that the company file a market study or appraisal estimating the market value of the intangible. This requirement is necessary in order to meet the Commission's obligation under L.D. 508 to determine the value of the intangible within 180 days.

Section 7: Standards of Conduct

This section of the rule sets forth mandatory standards of conduct including the use of customer information. The provisions on customer information are consistent with the treatment of customer information in the *Cochrane* case. The proposed rule imposes additional minimum standards of conduct that are intended to "ensure that the utility or the affiliated interest does not have an undue advantage in any competitive market as a result of its regulated status or its affiliation with a regulated utility." 35-A M.R.S.A. § 713. The proposed rule also envisions that additional conditions may be necessary in specific circumstances in order to protect the public interest. The rule does not address codes of conduct governing marketing affiliates of transmission and distribution utilities

under electric restructuring. 35-A M.R.S.A. § 3205. This matter will be addressed in a separate rulemaking.

IV. ADDITIONAL REQUESTS FOR COMMENTS

We envision that this rule will apply to existing non-core activities. Thus, if a utility is providing a non-core service, it will be obligated under the rule to transfer that service or activity to an affiliated entity. We do not envision that this rule will apply to existing affiliated transactions that have already been approved by the Commission. We request further comment on these matters.

V. PROCEDURES FOR THIS RULEMAKING

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. A public hearing on this matter will be held on January 6, 1998 at 1:30 p.m. in the Public Utilities Commission hearing room. Written comments on the proposed rule may be filed until January 16, 1998; however, the Commission requests that persons planning on attending the hearing file initial comments by December 19, 1997 to allow for follow-up inquiries during the hearing. Supplemental comments may be filed after the hearing. Written comments should refer to the docket number of this proceeding, Docket No. 97-886, and should be sent to the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

Please notify the Commission if special accommodations are needed to make the hearing accessible to you by calling 1-287-1396 or TTY 1-800-437-1220. Requests for reasonable accommodations must be received 48 hours before the scheduled event.

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed rule is expected to be minimal. The Commission invites all interested persons to comment on the fiscal impact, the economic effects, and all other implications of the proposed rule.

The Administrative Director shall send copies of this Order and the attached proposed rule to:

1. All utilities in the State of Maine, except water carriers and COCOTS;

2. All persons who have filed with the Commission within the past year a written request for notice of rulemakings;

3. All persons on the service lists for Docket Nos. 96-053, 96-285 and 97-173;

4. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and

5. The Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333 (20 copies).

Accordingly, we

O R D E R

1. That the Administrative Director send copies of this Notice of Rulemaking and attached proposed rule to all persons listed above and compile a service list of all such persons and any persons submitting written comments on the proposed rule; and

2. That the Administrative Director send a copy of this Notice of Rulemaking and attached proposed rule to the Secretary of State for publication in accordance with 5 M.R.S.A. § 8053.

Dated at Augusta, Maine this 4th day of December, 1997.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Hunt

65 - INDEPENDENT AGENCIES - REGULATORY

407 - PUBLIC UTILITIES COMMISSION

Chapter 820 - REQUIREMENTS FOR NON-CORE UTILITY ACTIVITIES AND TRANSACTIONS BETWEEN AFFILIATES

SUMMARY: This rule describes the record keeping, accounting and structural requirements that Maine utilities must comply with if they engage in unregulated business ventures consistent with the requirements in 35-A M.R.S.A. §§ 503, 707, 708, 714 and 715.

1. DEFINITIONS

A. Aggregate Customer Information (ACI). "Aggregate customer information" is information that does not identify any individual customer and is available to a utility solely by virtue of the utility-customer relationship.

B. Capitalization. “Capitalization” means the sum of the utility’s debt and equity.

C. Core Utility Service. “Core utility service” means the generation, transmission or distribution of electricity, gas or water and activities necessary to perform those functions, except that any service that a utility provides outside of its service territory, is not a core service. Services necessary to perform generation, transmission or distribution functions include billing and meter reading. For telephone local exchange carriers, core utility service means any services provided by the LEC as part of the public switched network, as well as private lines, except that information services, interlata toll services and manufacturing operations, and services provided outside of the LEC’s service territory are not core services.

D. Customer Specific Information (CSI). “Customer specific information” is information that relates to the usage, technical configuration or type of utility service subscribed to by a particular customer of a public utility and is available to the utility solely by virtue of the utility-customer relationship.

E. Good will. "Good will" is a benefit or advantage to the utility of having an established reputation and established customer relationships.

F. Incidental Service. “Incidental service” is any non-core utility service provided on an occasional basis to either utility customers or non-customers that is not marketed or is designed to have a negligible revenue impact.

G. Intangibles. "Intangibles" are assets or property that have no material existence. Examples of intangibles include but are not limited to: company name, customer relationships, reputation, good will, rights of way, copyrights, patent rights, trade secrets, trademarks, trade names, royalty interests, licenses, franchises, leases, and mortgages.

H. Local Exchange Carrier (LEC). A “local exchange carrier” (LEC) is a telephone utility, as defined by 35-A M.R.S.A. § 102(19), that provides telephone exchange service or interexchange access service within a telephone exchange pursuant to authority granted by or under Private and Special Law of the State of Maine; or Public Law 1895, ch. 103, § 103 or subsequent codifications or 35-A § 2102; LECs include incumbent local exchange carriers and competitive local exchange carriers, and local resellers, all as defined in Chapter 280 of the

Commission’s Rules. A local exchange carrier does not include a commercial mobile radio service.

I. Investment Grade Bond Rating. "Investment grade bond rating" is a rating for senior secured debt of above BB+ for Standard and Poor's, Duff and Phelps Credit Rating Company and Fitch Investors Service and above Ba1 for Moody's Investor Service. If a utility is not publicly rated, investment grade bond rating may be determined by a private letter rating.

J. Net Book Value. “Net book value” means original cost of an asset minus its depreciation reserve and accumulated deferred income taxes.

K. Non-Core Utility Service. “Non-core utility service” is any service provided by an electric, gas, water utility, or telephone local exchange carrier, or any affiliate of these entities, that does not meet the definition of core utility service or incidental service.

L. Service Territory. “Service Territory” means the geographic area in which the utility has been authorized to serve, as of the effective date of this rule, by (1) an order issued by the Commission pursuant to 35-A M.R.S.A. § 2102(1) or § 2104; (2) private and special law and preserved by 35-A M.R.S.A. § 2102(2); or otherwise authorized by law.

2. SEPARATE ENTITY FOR NON-CORE UTILITY SERVICES

A. Limitation. A utility may not offer core and non-core utility services within the same corporate entity. A utility must establish a separate corporate entity to offer non-core services.

B. Establishment of Separate Corporate Entity. If a utility establishes a separate corporate entity in which to undertake non-core activities, the establishment of that entity is subject to the reorganization requirements in 35-A M.R.S.A. § 708.

C. Use of Existing Subsidiary. A utility may undertake non-core utility activities in an existing affiliated interest, upon complying with the notice requirements in Section 5 below. A utility must obtain Commission approval pursuant to 35-A M.R.S.A. § 707 for any new arrangement or contract between the existing subsidiary and core utility arising from the non-core activity.

D. Transferring Utility Assets. If a utility plans to transfer any utility asset to an entity undertaking non-core activities, it must obtain Commission approval of that transfer pursuant to 35-A M.R.S.A. § 707 and Section 3 of this rule.

E. Use of Utility Facilities, Intangibles, Services. For any contract or arrangement expected to involve the use by an affiliated interest of utility facilities, intangibles or services of any utility facility, intangible, or personnel, the utility must seek Commission approval of those contracts and arrangements pursuant to 35-A M.R.S.A. § 707 and Section 3 of this rule.

3. VALUE OF UTILITY GOODS, SERVICES AND INTANGIBLES

A. Valuing Utility Equipment, Facilities, Services, or Personnel used by an Affiliate. Any utility equipment, facility, service or personnel used by an affiliate shall be charged to the affiliate at fully distributed cost and recorded as income on the books of the utility.

1) Fully Distributed Costing Methodology Required. A utility must assign and apportion costs between its core utility service and non-core utility activities in accordance with the principles set forth in the FCC's rules regarding cost allocations to regulated and non regulated activities, 47 C.F.R. § 64.901(b)(1-3), attached hereto as appendix A.

B. Valuing Assets Transferred by Utility to Affiliate. Assets of a utility transferred to an affiliate shall be recorded at the greater of net book value or market price.

SUBSECTION C: ALTERNATIVE 1

C. Value of Utility Intangibles Transferred to an Affiliate or Used by an Affiliate. The value of any utility intangible transferred from a utility to an affiliate or used by the affiliate is the market value of the intangible as determined by the Commission in a proceeding in which the utility seeks the Commission's approval of an agreement or arrangement involving the use of that intangible.

SUBSECTION C: ALTERNATIVE 2

C. Value of Utility Intangibles Transferred to an Affiliate or Used by an Affiliate. The value of any utility intangible transferred from a utility to an affiliate or used by the affiliate is the market value of the intangible as determined by the Commission in a proceeding in which the utility seeks the

Commission's approval of an agreement or arrangement involving the use of that intangible, except that a rebuttable presumption exists that the value of the use of company name, good will, or customer relationships is equal to two percent of the total capitalization of the affiliate.

D. Valuing Use by a Utility of an Affiliate's Equipment Facilities, Services or Personnel. Equipment, facilities, services or personnel of an affiliate used by a utility shall be priced at the same price charged non-affiliates. If no such price is available, the service, facility or personnel shall be priced at the lower of fully distributed cost or the market price of comparable services.

E. Asset of an Affiliate Transferred to a Utility. An asset of an affiliate transferred to a utility shall be recorded at the lesser of net book value or the market price.

F. Cost Manual. A utility shall maintain a cost manual or other written material documenting its cost allocation methodology.

G. Charges to Affiliate; Reports. The utility shall charge its affiliate an appropriate amount determined pursuant to subsections A through F. Any extension of payment terms beyond the terms offered in the course of normal business requires Commission approval. As part of its annual report, filed pursuant to 35-A M.R.S.A. § 504, the utility shall indicate the amount received from its affiliates for the use of the utility's equipment, facilities, services, personnel and intangibles. Auditors must check for compliance with this chapter and applicable Commission orders.

4. CAP ON INVESTMENTS BY UTILITY IN AFFILIATES

A. Permissible Level of Total Investment. The total amount that a utility may invest in affiliated interests shall not exceed five percent of the utility's total capitalization.

B. Rebuttable Presumption. If the utility has attained investment grade bond rating and the amount that it seeks to invest will not cause the utility to exceed the permissible level of total investment, a rebuttable presumption exists that the investment will not harm the utility or its ratepayers.

C. Investment Not Permitted. No petition for affiliated interest or reorganization approval for a utility to invest in an affiliated interest shall be approved if the utility's bond rating is below investment grade or if the utility has filed for, or been granted, an emergency rate increase within six months of the filing for approval to invest in the affiliated interest.

5. RATEMAKING TREATMENT

A. Below-the-Line Treatment. All non-core utility activities will be treated as below-the-line for ratemaking purposes.

B. Value of Intangibles; Presumption in Favor of Allocation to Ratepayers. A rebuttable presumption exists that the positive value of utility intangibles transferred to or used by an affiliate will be allocated entirely to ratepayers. A utility may rebut this presumption by providing evidence that the intangible is wholly unrelated to the utility's provision of service to ratepayers.

6. FILING REQUIREMENTS

A. Notification of Intent to Undertake Non-Core Utility Activity. A utility must notify the Commission of each non-core utility activity it intends to pursue within 30 days of the commencement of operations.

B. Type of Notification.

1) New Corporate Entity. If a utility plans to establish a new corporate entity in which to conduct the non-core utility activity, notification will be achieved when it makes its required filing pursuant to 35-A M.R.S.A. § 708(2).

2) Use of Existing Affiliate. If a utility plans to undertake a non-core activity in an existing affiliate, it shall submit a letter to the Commission describing the non-core utility activity and the name of the affiliate in which it will undertake the activity and seek any approvals required by 35-A M.R.S.A. § 707.

C. Information to be Included with Section 707 Filing. For all requests for approval of affiliated transactions pursuant to 35-A M.R.S.A. § 707, the utility seeking approval must file prefiled testimony including the following, as applicable:

1) An indication of the specific affiliated transactions for which the utility seeks approval pursuant to section 707;

2) For any contract or arrangement expected to involve the use by an affiliated interest of any

asset, including intangibles, the utility's determination of the value of the asset;

3) Supporting documentation for the utility's asset value determination;

a. Intangibles. For intangibles the utility shall provide a market study or appraisal estimating the market value of the intangible.

b. Tangible assets. For any tangible asset, documentation for the book value, the price charged to other affiliates, or the market price of comparable assets.

4) Any support services agreements; and

5) Any agreements and contracts for which the utility seeks approval.

D. Information required to be included with Section 708 filing. For all requests for approval of reorganizations pursuant to 35-A M.R.S.A. § 708, the utility seeking approval must file prefiled testimony including the following information, as applicable:

1. The amount the utility seeks to invest as part of the reorganization in the affiliated interest;

2. If the utility proposes to invest any amount in the affiliated interest, it shall provide:

a. A statement of the utility's bond rating or equivalent credit rating; and

b. The utility's cash flow and earnings projections and proforma balance sheets for a period of no less than two years from the end of the fiscal year in which the filing is made.

7. STANDARDS OF CONDUCT

A. Limits on Use of Customer Information.

1) Use by Affiliate of CSI or ACI. A utility affiliate must purchase any CSI or ACI it wishes to use from the core utility at market value.

2) Availability of CSI or ACI. If a utility makes CSI or ACI available to a non-core utility subsidiary, it must make the CSI or ACI available to any other entity requesting it, on the same terms.

3) Affirmative Permission of Customer Required. To use any CSI (as distinguished from ACI), the utility must obtain affirmative, written permission from the customer.

B. Obligation to Provide Information; Assistance. If a utility provides information related to its status as a public utility, it must provide such information upon request to nonaffiliated companies.

C. Preferences Forbidden. The utility may not act in preference to its affiliate in providing access to utility facilities or services or in influencing utility customers to use the services of its affiliates. A utility that provides the name of its affiliate to a customer interested

in the services of its affiliate must also provide the names of non-affiliated entities providing such services.

D. Additional Standards of Conduct. This rule does not limit the Commission from imposing additional standards of conduct on a utility's activities related to its affiliated interests to the extent necessary to protect the public interest.